



**Anti-Money Laundering
Compliance & Reforms:
Beyond compliance**

March 2020



Topics

1. AML snapshot
2. Best practice AML program
3. Outsourcing (agency v reliance)
4. Proposed reforms
5. Recent cases

AML/CTF regime and obligations

– snapshot

Key obligations

- Enrol/register with AUSTRAC
- AML/CTF program
- AML/CTF compliance officer
- Customer identification
- Ongoing customer due diligence
- Reporting
- Record-keeping

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML Act)

→ **key obligations/framework**

Anti-Money Laundering and Counter-Terrorism Financing Rules 2007 (No. 1) (Cth) (AML Rules)

→ **detailed/prescriptive requirements**

Financial Transaction Reports Act 1988 (Cth), Criminal Code and Autonomous Sanctions Act 2011 (Cth)

→ **other key legislation**

AML/CTF regime and obligations

– importance



AML/CTF compliance is **vital in identifying, disrupting and preventing money laundering, terrorism financing and other illegal activity.** This protects your business or organisation, your community and Australia from criminal activity.



A global issue that affects Australia and Australians



Terrorism and criminals are constantly finding ways to move money throughout the financial eco-system



IT is an integral part of this eco-system



Onus is being pushed onto companies/businesses to help combat money laundering and terrorism financing activities

AML/CTF program

– structural requirements

Part A – Identify, manage and mitigate risk

- ML/TF risk assessment risk
- AML/CTF Compliance Officer
- Board/Senior Management oversight
- Employee due diligence and risk awareness training
- Ongoing customer due diligence/transaction monitoring
- Enhanced customer due diligence
- Reporting obligations
- Program (independent) review
- Outsourcing

Part B – Customer identification procedures

- Procedures for collecting and verifying different customer types (e.g. individuals, companies, trusts) – depending on risk rating
- Verification methods and procedures
- Beneficial owners
- Politically exposed persons
- Managing discrepancies and errors



AML/CTF program

– best practice



AUSTRAC reported that some of the AML/CTF programs it reviewed included large sections that were copied from the AML/CTF Rules or the AUSTRAC compliance guide. Those AML/CTF programs did not set out the actual systems and controls that a reporting entity had in place.

Best practice, tips and tricks

Tailored, clear and organised

- Use clear and straightforward language to help employees understand:
 - The nature of risks in the business
 - What they need to do
 - Circumstances that trigger additional action
- Your AML/CTF program is akin to writing your own ‘law’ – which creates a tension between wanting to comprehensively address the principles-based content requirements and setting unachievable standards
- Organisation is key:
 - Working out what needs to be in the program and what should be outside it
 - Where content overlaps between documents, ensure they are consistent

AML/CTF program

– best practice



AUSTRAC has observed that some reporting entities have adopted generic ‘off-the-shelf’ risk assessments that are not tailored to protect a reporting entity’s specific business

Best practice, tips and tricks

Risk assessments

- Not required to be in AML/CTF program
- Must be documented and undertaken on a robust basis.
- Risk assessments in large organisations:
 - Undertake at the enterprise level to ensure proper senior management and board oversight
 - Filter down to individual business units for validation or adjustment based on their particular circumstances
 - If undertaken at divisional level, ensure proper oversight to ensure consistency of approach



AML/CTF program

– best practice



AUSTRAC has observed that where AML/CTF programs did not include procedures to ensure Board oversight, further investigation often found that the Board had not overseen the functioning of the reporting entity's AML/CTF program as required.

Best practice, tips and tricks

Governance and oversight

- AML/CTF program for DBG must be able to work at enterprise level
- Application of program to individual business lines requires tailoring – but Board and senior management oversight still required
- The program needs to address how the AML/CTF compliance officer is accountable to the board or senior management, for example when approving exemptions and exceptions
- For the Board and senior management to effectively lead a positive culture of AML/CTF compliance, AML/CTF must be more than just a standing item for mention at meetings



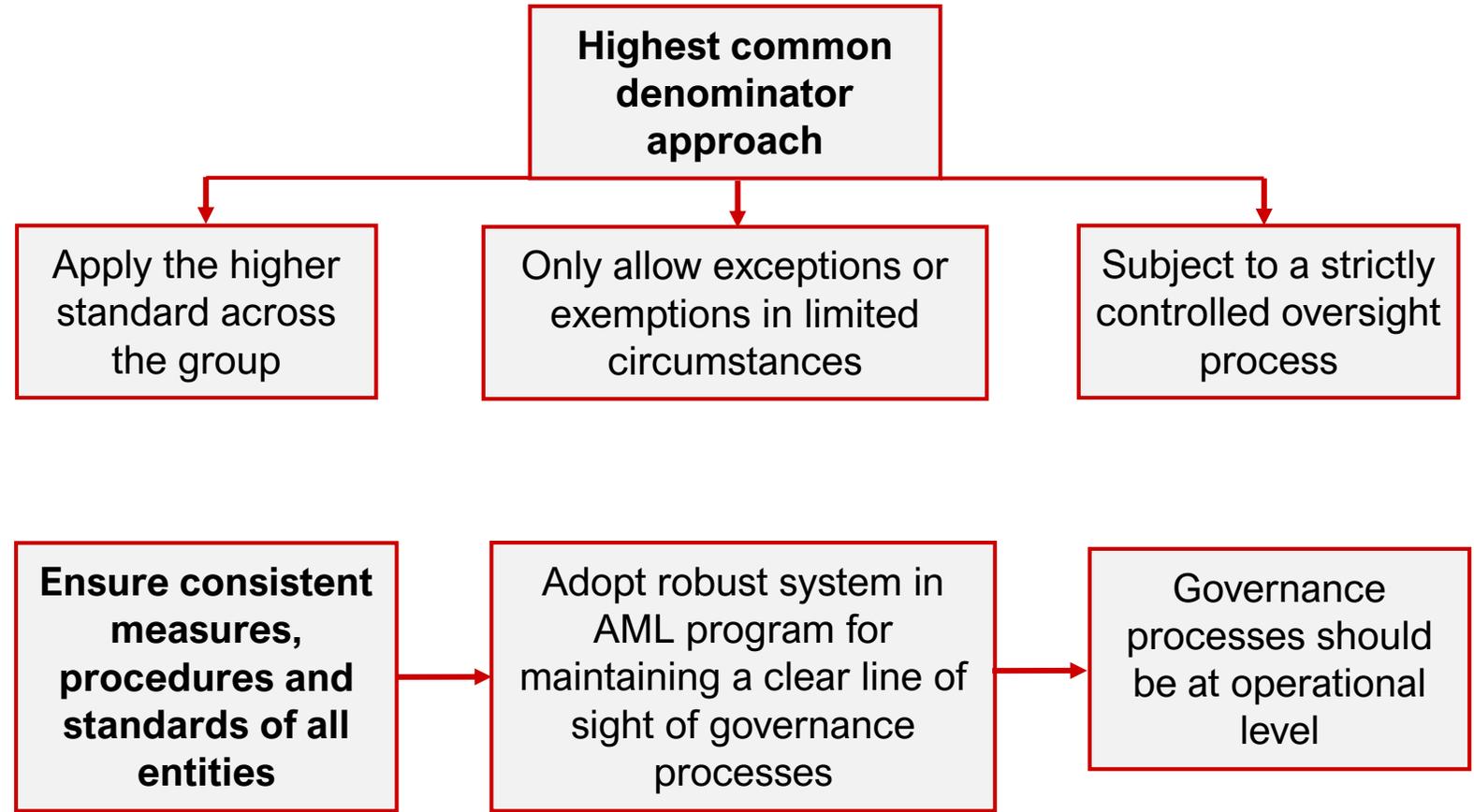
AML/CTF program

– best practice



The ability for other divisions to add **extra layers of policies and processes** or to seek exemptions and exceptions from the minimum approach documented in the AML program can give rise to the risk of **inconsistent approaches** to the identification, management and mitigation of ML/TF risks.

Best practice, tips and tricks



AML/CTF program

– best practice



A particular area of focus in the Royal Commission Final Report was the **influence of remuneration** and the need for financial service entities to ensure their systems, processes and controls are **fit for purpose** and enable effective **risk and compliance management**.

Best practice, tips and tricks

Royal Commission

- Consider the Final Report of the Royal Commission in the next review of the AML program as certain thematic issues may be relevant to an assessment of the effectiveness of the program
- Culture, governance and remuneration – and ML/TF risks?
 - Remuneration may play a role in increasing ML/TF risk where staff are incentivised to maximise the financial results of the reporting entity
 - The AML/CTF Rules require senior management approval in certain circumstances – consider if and when senior management can override the AML Compliance Officer’s recommendation
- Using data and technology to successfully operationalise the program



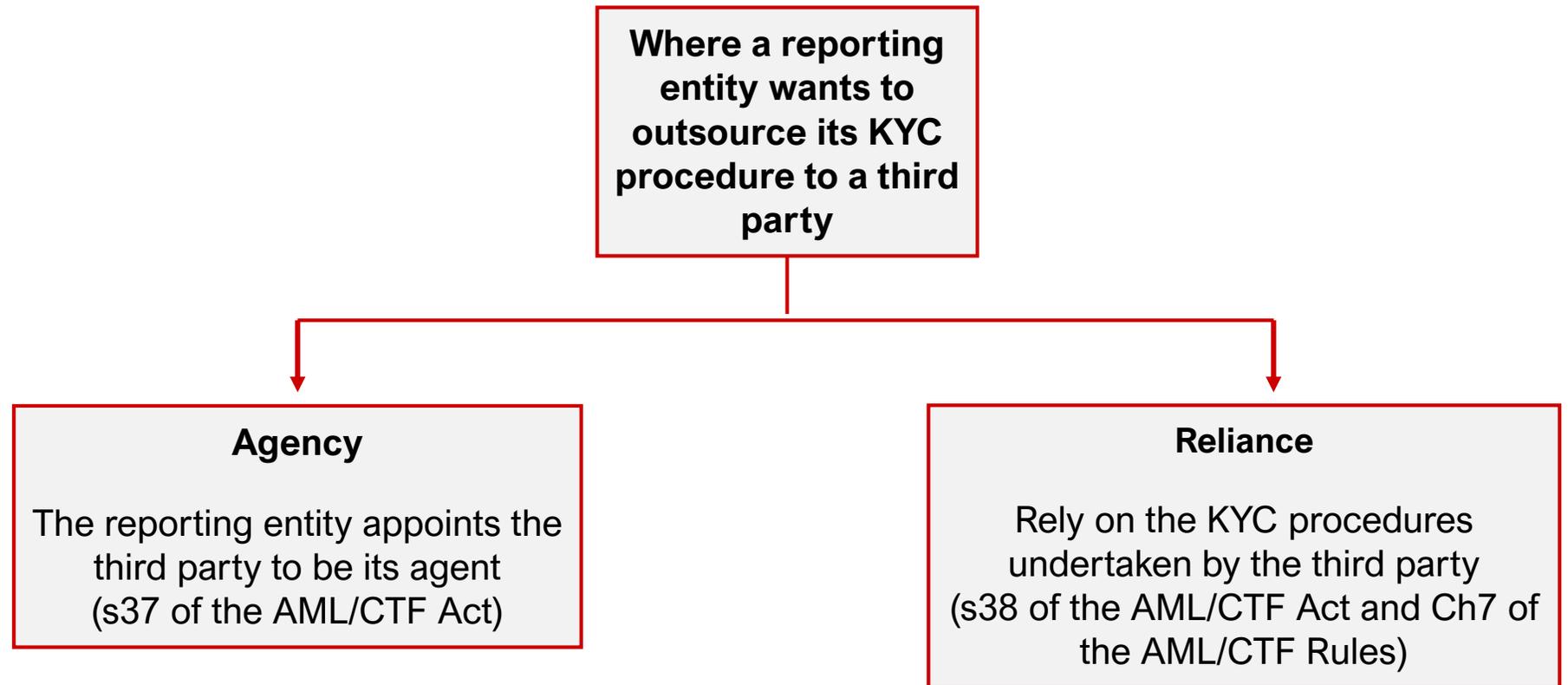
AML/CTF compliance

– outsourcing



AUSTRAC has observed that some reporting entities assume that the processes they, or their service providers, have implemented are working correctly and are compliant. Often, discovery of non-compliance occurs after a substantial breach or adverse assessment from AUSTRAC.

Agency v reliance



AML/CTF compliance

– outsourcing



A third party's failure to follow compliant procedures places the reporting entity in breach and, at times, at risk of incurring financial penalty and reputational damage. Most importantly, it also increases the risk that ML/TF events will occur undetected.

Agency

- Third party is appointed as the reporting entity's agent to conduct KYC on customers
- Third party undertakes KYC in accordance with the reporting entity's AML/CTF program and procedures and as if they are the reporting entity
- The reporting entity will be liable for the third party's conduct
- Reporting entity can adopt third party's processes if satisfied they are appropriate, but if not third party must comply with the reporting entity's AML/CTF program

Reliance

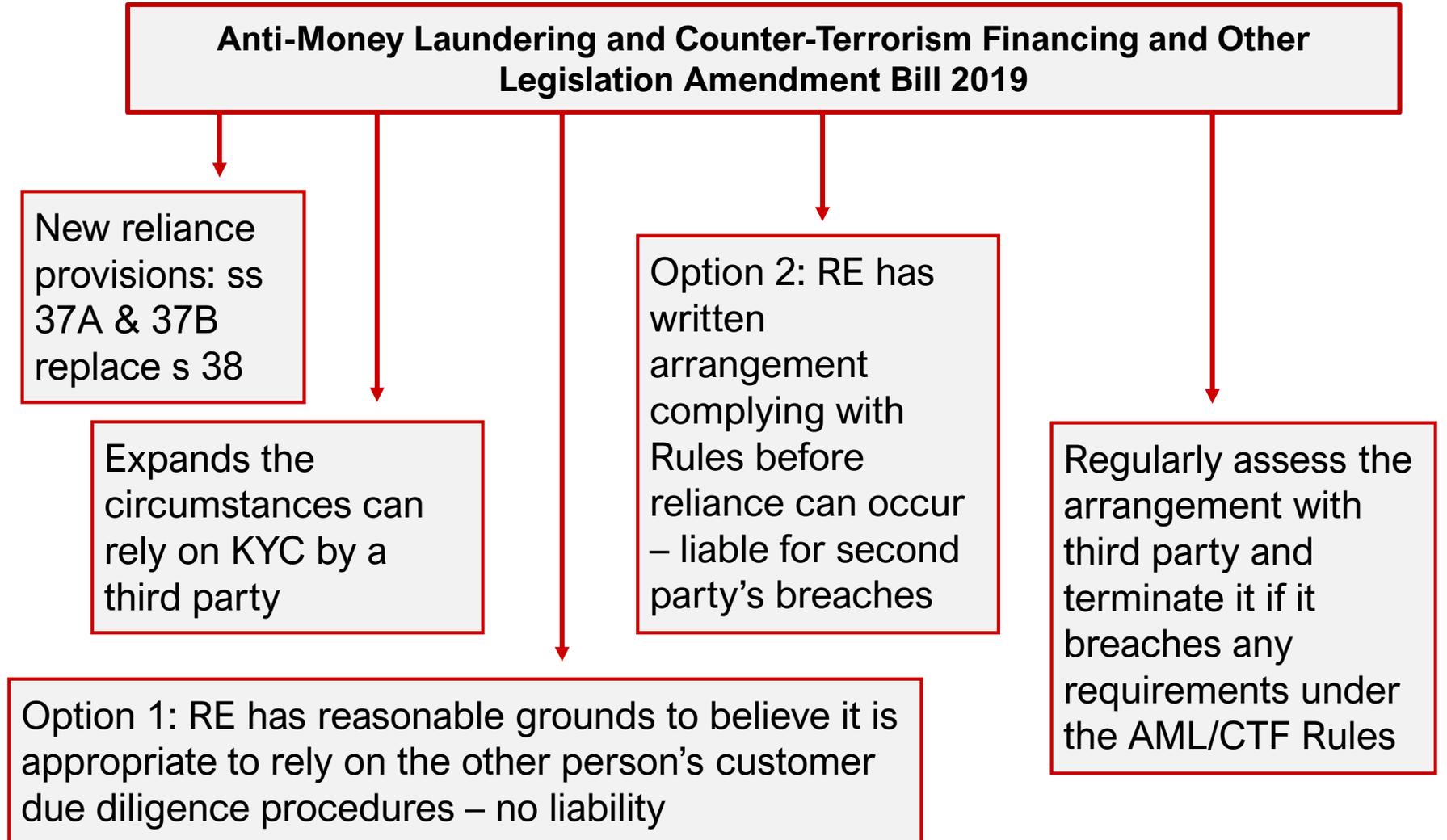
- Third party arranges for a customer to receive a designated service from the reporting entity – the reporting entity can rely on the KYC of the customer undertaken by the third party
- Third party conducts KYC in accordance with their AML/CTF program (not the reporting entity's)
- No liability for the third party's conduct, but reporting entity must:
 - conduct due diligence on the third party and determine appropriate to rely on their KYC procedures
 - obtain a copy of the third party's KYC records or have agreement to have ready access to records

AML/CTF update

– proposed reforms



A Bill proposes a number of amendments, including to the 'reliance' provisions, strengthening the protections for correspondent banking and expand the exemptions for tipping off offence.



AML/CTF update

– other recent changes

2016	AML/CTF statutory review
2017	First phase of changes implementing changes from statutory review
January 2018	Exemptions for identification of beneficial ownership expanded to include majority-owner subsidiaries of foreign publicly-listed companies
March 2018	AML/CTF regime expanded to digital currency exchange providers
March 2019	Amendment made to the AML/CTF Rules to provide relief to corporate customers who are 'custodians' from certain identification requirements.
October 2019	New Bill to restrict third party reliance provisions, changing correspondent banking rules and extend exceptions to the tipping off offence.
2020-2021?	Tranche 2 amendments – expanding regime to cover real estate agents, jewellers, lawyers and accountants

AML/CTF lessons learnt

– recent AML cases



Westpac accused of more than 23m breaches of anti-money laundering laws

Tabcorp

Tabcorp's record \$45m AUSTRAC fine could have been a lot worse



Commonwealth Bank to pay \$700m fine for anti-money laundering, terror financing law breaches



AML/CTF lessons learnt

– recent AML cases



AUSTRAC issues \$252,000 infringement notice to Compass



'Incorrect' legal advice responsible for Afterpay's AUSTRAC breaches



PayPal ordered to investigate potential breaches



Key takeaways

1. AML/CTF non-compliance is very serious – significant fines and disqualifications
2. Board oversight is expected – be proactive and do not let issues drag on – follow through on executive accountabilities
3. You must comply with your own AML/CTF Program and subject it to periodic internal and external review – this is not ‘set and forget’
4. Systemic risk can attach to low value / automated transactions
5. Inadequate measures for IFTIs and TTRs multiply the risk .. and don’t ignore SMRs